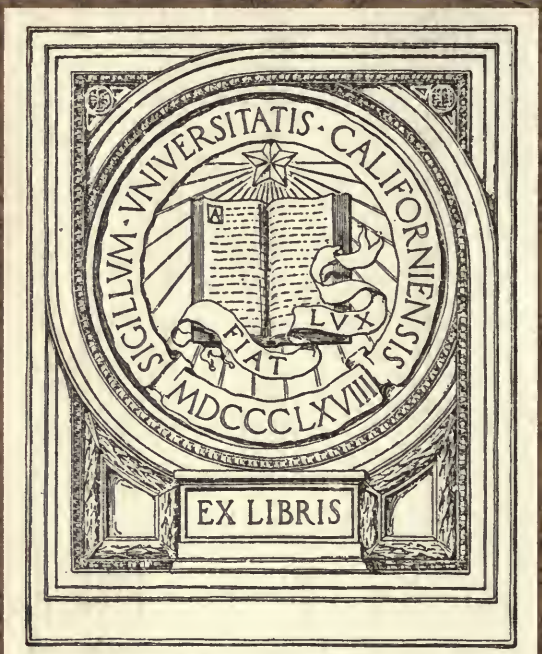

A DEFENSE

OF THE

Reconstruction Acts of Congress,

AND

CRITICAL REVIEW

OF THE

INAUGURAL OF H. H. HAIGHT,

GOVERNOR OF CALIFORNIA,

COMPRISING IMPORTANT POINTS AT ISSUE IN THE PRESENT CAMPAIGN:

Respectfully Dedicated

To the Union-Republican Congressmen from the Pacific States,

AND

TO THE ORDER OF FREEDOM'S DEFENDERS,

BY

Professor AUGUSTUS LAYRES.

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Propositions maintained in the Defense.

NOTE.—The reader will remark that most of the reasons given in the defense are very concise. This is owing to the necessity of preparing a brief summary of the grounds upon which the main points at issue rest for persons who have not time to read long dissertations.—(AUTHOR).

DEFENSE

OF THE RECONSTRUCTION ACTS OF CONGRESS.

1. In commencing the defense of the Congressional Reconstruction, and the critical review of Governor Haight's Inaugural Address, we deem it necessary to acquaint the reader with the motives which have impelled us to this undertaking, lest it may appear on our part an act of temerity. They are two—right and duty.

2. When the policy of one party is fiercely attacked by another, it is the undisputed right of every member of the former to defend it from the assaults of the latter; but, when that policy is approved by the majority of a nation, it is then the bounden duty of every loyal citizen and friend of the government to rally to its support.

3. The attack made upon a policy sanctioned by the majority of a commonwealth is a covert assault upon the fundamental principle of a Republican Government, that "the majority must rule." If this principle be surrendered, the magnificent edifice of the Republic must necessarily fall. The beautiful statue of liberty will soon crumble to fragments, social order will cease, anarchy will prevail, popular government will be at an end.

4. Can a loyal citizen, a friend of popular institutions, be instrumental to such lamentable catastrophe by culpable inactivity? Can the friends of freedom and progress remain indifferent to the evils which will thence ensue, not in this country alone, but all over the world? Now this is precisely our case.

5. The acts of Congress for the reconstruction of the late insurgent States, supported by the Union-Republican Party, approved by the majority of the nation, are vehemently denounced as tyrannical and unconstitutional by the Democracy. The Author of the Inaugural Address (1) styles them "*a violation of the fundamental principles of the Constitution; a violation of liberty; of every sentiment of humanity and Christianity; a disgrace to our country and to the age in which we live.*"

6. We claim, therefore, that it is both our right and duty to defend the Reconstruction Acts with all the force of argument we can control; and, though we are not a match for a giant, we may nevertheless try our sling. Indeed, if seeing very clearly by the light of reason which God has given us, the right, justice, and necessity of those acts, either from human fear, or other base motive, we should shrink from the duty of expressing publicly our sentiments, we would be criminal deserters of a sacred cause; would be guilty of omission in a strict duty to the Government; and, as far as it lies in our power, would frustrate the noble design of a wise Providence in endowing men with reason, that they may thereby subserve their own as well as the interests of the society in which they live. Earnestly we trust and pray, that the enormous weight of such infamous crime may never rest on our conscience! Hence, openly and fearlessly we affirm, that the reconstruction measures of Congress respecting the insurgent States are founded on right, justice, and necessity; and as such are entitled to the support of every loyal American citizen and friend of just government.

7. For the sake of order, we shall divide the Review and Defense into three parts, and shall endeavor to prove three points: FIRST—We shall demonstrate that the insurgent States had no right to secede by their own authority; SECOND—That by rebellion and secession they lost their character and condition of States of the Union, and at the close of the war they had no civil governments; FINALLY—We shall consider the logical results of the crime and punishment of armed rebellion, and shall reply to various objections and false charges started by our adversary and his party-friends.

8. The long list of wrongs recited by the Author of the Inaugural and repeated by the Democratic Convention as arising from the Congressional policy of reconstruction, are based upon the assumption that the insurgent States are still in the Union as States, and are therefore entitled to all the rights and privileges of Federal States under the Constitution. Now this assumption requires proof; for, it contains in reality the chief point in

(1) The quotations in italics in this article are extracts from Governor H. H. HAIGHT'S INAUGURAL ADDRESS, which we have selected in preference to other documents, because it contains in brief all the main objections and charges of the Democracy against Congressional reconstruction.

controversy; the main position, on the gain or loss of which depends the victory or defeat of the one side or the other.

9. This important point the author of the Inaugural proves as follows: "*We have fought against the principle of secession, and have established the doctrine, that no State can withdraw from the Union* (by its own authority.) *Those States (therefore) are not out of the Union* (as States)." This argument may more forcibly be presented thus: If we admit that the insurgent States are out of the Union as States, we must admit that they had the right to secede by their own authority; but we cannot admit that they had the right to secede by their own authority, consistently with the principles we held and established by the war; therefore the insurgent States are not out of the Union *as States*.

10. The logical force of this argument is similar to the following: If we admit that a murderer can be deprived of life, we must admit that he can kill himself by his own authority; but we cannot admit that a murderer can kill himself by his own authority; therefore a murderer cannot be deprived of life.

11. In the author's syllogism, the minor proposition is unquestionably true; and as that comprises one of the main divisions of our subject, we design to support it by copious arguments.

FIRST PART.

THE INSURGENT STATES HAD NO RIGHT TO SECEDE BY THEIR OWN AUTHORITY.

12. What is it to secede from the Union by State authority? It is to withdraw from the National Union; it is to assume, or (as secessionists say) to resume powers of separate and independent sovereignty, not by National, but by State authority. No Federal State can secede thus.

13. Whether a State assume or resume sovereign powers, which by the admission of all are vested in the Federal Government under the Constitution, it is evident that such an assumption by the former is a derogation of power from the latter which leads to its final extinction; it supposes therefore a repeal of the Federal Constitution.

14. The author of the Address affirms the same thing in these words: "*the right of any member of the Union to withdraw at pleasure, and thereby extinguish Federal authority over its citizens, could never be recognized without assenting to the practical repeal of the Constitution and the abolition of the Federal Government.*"

15. But, neither the Constitution can be repealed, nor can the Federal Government be abolished by separate State authority; simply, because a law and government which emanate from a superior power can neither be altered nor abolished by an inferior one. This principle is universally admitted, and upon it rest in great measure both sacred and civil jurisprudence.

16. Now, the Constitution of the United States, having been first adopted by the Representatives of the United States of America in General Congress assembled, and ratified afterwards by the people of said States, derives its power from the people of the United States collectively; it can neither be altered therefore, nor abolished by separate State authority, any more than the Constitution of the State of California can be amended or repealed by one county.

17. But, State authority is paramount to Federal authority, reply secessionists. This assertion is positively denied, for the following reasons: *First*—The absurdities which would follow are absolutely inadmissible. If State authority were superior to the Federal, each and every State would really be a separate and independent sovereignty; consequently, the Union of States would be nominal and not real. Each State, though a part of the Union, would possess more power than the whole Union. The Federal Government would be destitute of jurisdiction. The Constitution which creates three different branches of the Government and defines their respective powers and duties, would be useless and nugatory. The form of Government of the United States would not—as required by the Constitution—be republican in form; because a Republican Government is founded on "the will of the majority as a rule." But if every Federal State is really sovereign and independent, even in National matters, the majority of States can exercise no control over it.

18. *Second*—State authority cannot be superior to Federal authority, because it is created by the latter. Each and every State was raised to that position by the National will, and previous to its admission into the sisterhood of States was either a colony or territory under authority. This fact can easily be proved by the history of the Nation. The thirteen original colonies were primitively subject to the British Crown, and each of them was made a free and independent State by the will of the people of the United Colonies, who, through their Representatives in General Congress assembled, issued a Declaration known as the Declaration of Independence, which they successfully supported with their blood and treasure. The words of the Declaration are so clear, on this point, as to need no comment: "We therefore, the Representatives, etc., do, in the name and by the authority of the

"good people of these Colonies, solemnly publish and declare that these United Colonies are, "and of right ought to be, free and independent States; that they are absolved from all "allegiance to the British Crown, etc. And for the support of this Declaration we mutually "pledge to each other our lives, our fortunes, and our sacred honor."

Now with regard to other States, subsequently admitted into the Union, the National Records show likewise that they were formerly territories of the United States, and were admitted into the Union as States under Federal authority in National matters, by an act of Congress. Therefore, State authority is not superior to Federal authority.

19. *Third*—Supposing, even, that some States (not all) had once been separate, independent sovereignties; when they created the Federal Government for mutual protection, they entered into a compact, that all national questions should be discussed in the National Council. To this compact they did, and all new States do agree, before their admission into the Union; it cannot, therefore, be violated without a breach of public faith. Hence it follows, that the United States are dependent in national questions upon Federal authority.

20. *Fourth*—Even if we suppose that each State had a separate national existence before the formation of the Federal Government,—State authority is nevertheless inferior to Federal authority; and the people of a State cannot resume at pleasure the sovereign powers delegated to the General Government.

21. The doctrine that "Governments derive their just powers from the governed," namely, "the people," is undoubtedly true, and is amply supported by reason and fact. It is likewise true, that the people may choose the form of government which they deem best, either Monarchical, or Republican, or Mixed; also, that they may grant their powers to Governments for a definite or an indefinite period of time. But, withal, when a people by their own free act have formed a Government and clothed it with power, both civil right and custom teach, that they are bound by their own act; that they become subject to the Government of their choice, and cannot resume their original powers except in conformity with the provisions of the Constitution they have adopted.

22. Now, there is not a Constitution among those framed by Nations, which grants leave to a minority to resume powers of independent sovereignty at pleasure. Certainly, the Constitution of the United States does not grant it to any single State. Such a concession would be a nullification of the Constitution, and would constitute the germ of dissolution within the Government. If minorities had the right under the Constitution, to assume sovereign powers at pleasure, they would not be effectually bound by its provisions. For, they would have in their own hands the power to release themselves from its obligations whenever they pleased. The number of a minority might be steadily reduced until it reaches one. Every individual, therefore, when resisted in his wicked designs, by law, might resume his original sovereign power; declare his independence, and place himself beyond the jurisdiction of the law. All which is evidently absurd.

23. There is one case, however, in which minorities may resume their sovereign powers outside of the form prescribed by the Constitution, namely, by Revolution. This occurs when Governments tyrannically use the powers intrusted to them, or usurp others ungranted, for the oppression of their subjects. But revolution, even in this extreme case, can only be resorted to when every other legal remedy has been exhausted. Such was the case of the Fathers of the American Revolution, as they declared in the Document of Independence, which is altogether different from the case of the late insurgent States, which had neither been tyrannically oppressed by the Federal Government, nor had they tried all the legal means when they appealed to arms.

24. To conclude: each and every State of the Union, whether originally sovereign and independent or not, upon its admission into the Union became subordinate in national matters to Federal authority. The proposition, therefore, advanced by the author of the Inaugural in his argument that "*the insurgent States had no right to secede by their own authority*," is perfectly true; but it does not hence follow, as he concludes, that "*they are still in the Union as States.*" The inference is as illogical as that of the parallel argument. This we will show in the following

SECOND PART.

BY REBELLION AND SECESSION THE INSURGENT STATES LOST THEIR CHARACTER AND CONDITION OF STATES IN THE UNION, AND AT THE CLOSE OF THE WAR THEY HAD NO CIVIL GOVERNMENTS.

25. As the word *State* has a double signification, one geographical, the other political, it is well to define the sense in which it is employed in the foregoing proposition. The word State in a *geographical* acceptation denotes a certain section of a country, and is synonymous to the word *estate* or possession; because it forms a part of the national domain; in a *political* acceptation, it signifies the political organization of a people according to a certain form of Government.

26. In the above proposition, the word *State* is evidently used according to the latter

signification ; for the Southern States in a geographical sense are, and were in the Union after, as well as before, the war. When, therefore, we affirm that the insurgent States are out of the Union as States, we mean that they have no legal Governments, and that they are excluded from the national rights and privileges enjoyed by Federal States under the Constitution. On this point we are at issue not only with secession, but anti-secession Democrats also. We are, therefore, asked on all sides, How is it that States formerly in the Union have become disorganized and are excluded from the participation of the rights and privileges granted by the Constitution to Federal States? The answer is simple. By the crime of secession, rebellion and war against the Government, the insurgent States forfeited their civil governments and all the rights and privileges of Federal States, both *de jure* and *de facto*. The alleged reason contains two parts : first *de jure* from right ; second *de facto* from fact. We shall expound the first part, and begin with the illustration above offered in the parallel argument.

27. First part of the argument. "The insurgent States forfeited their civil governments and all the rights and privileges of Federal States *de jure*."

It is undoubtedly true, that no man can take away his own life and destroy the physical union of the body and soul by self-authority, because the natural law forbids it ; and by the same law, no other man or body of men can deprive him of the right to life, liberty, and the pursuit of happiness, as long as he complies with the laws of the community wherein he lives. If, however, he violate the law of society in points that are essential to its existence ; as, if he should murder peaceful citizens, or attempt to destroy the civil government ; in that event, the natural right of self-preservation justifies both man and society to defend their own existence at the peril even of the aggressor's life ; and, by the declaration of the Supreme Judge of the Universe and of all mankind, on account of his wicked and deadly assault the aggressor forfeits all his rights to life, liberty, and happiness granted by natural law.

28. In the same manner, by the Federal Constitution no State can withdraw from the Union by its own authority ; and by the same instrument, neither the Federal Government, nor any State or States can expel another from the Union, or exclude it from a participation in its Federal rights and privileges, as long as it complies with the requirements of the Constitution. But, if a State or States violate the Constitution in points that are essential to the maintenance of the Union ; as, if States should withdraw from the Union without national consent ; if subsequently, when asked to obey the Constitution, they should refuse, and attempt to strike down the life of the Nation ; in that case, the right of self-preservation, as well as the duty of enforcing the national law, justifies the Government in defending itself and the Constitution at all costs and hazards, even, if it need be, by the total subversion and destruction of the insurgent States ; and by the law of Nations, founded on the natural law, on account of their violation of the Constitution and armed aggression, said States forfeit *all* their political rights and privileges, but chiefly the right of self-government.

29. This doctrine has ever been maintained both in theory and practice by all Nations, as attested by ancient and modern history ; and there never was a rebellious State so utterly impudent and arrogant, after having been subdued by force of arms, as to still claim the right of self-government and a full share of political privileges.

30. Now the case we have described is precisely that of the Southern insurgent States as proved by the history of the rebellion. In the first place, they violated the Constitution in essential points by seizing Federal property and by seceding from the Union without the national consent ; which, as it has been demonstrated, no Federal State can rightfully do. Subsequently, being asked by Constitutional authority to restore the property seized and to return to their allegiance, they peremptorily and persistently refused. Lastly, they fired the first gun against the country's flag, and most wickedly attempted to strike down the life of the Nation. Hence, by the law and custom of Nations founded on the natural law, they forfeited *de jure* their civil governments, and all the rights and privileges of Federal States ; consequently, by reason of these acts, they ceased to be States in the Union.

31. But Democrats reply "that States can not forfeit their rights." "The people of a State (say some) may rebel ; but the State itself cannot, because it has no superior."

32. This answer, to say the least, is void of sense : for, what does it mean, that "a State cannot rebel," and that "it has no superior"? In what sense is the word "State" here taken? In the geographical, signifying a section of land? The idea is then both laughable and absurd. Who ever heard of a tract of land rebelling against a Government? Nor is it true, in this case, that the land spoken of has no superior ; for it has a soverign, namely, the United States. Is the word "State" used in a political sense, denoting the civil organization of a people according to a certain form of government? In this case, both propositions, that "a State cannot rebel" and "has no superior," are false, and in plain contradiction with the first assertion, "the people of a State may rebel."

33. "But States cannot forfeit their rights," urge "the unterrified." Why? Because they are granted by the Constitution in perpetuity. Aye ; but not unconditionally. The condition is that States shall not violate the Constitution ; shall not resist Federal authority ; shall not attempt to destroy the Government.

34. But we find no where in the Constitution, insist they, that States may be punished for crime with privation of all their rights. To this last corner, therefore, must our adversaries retreat in their defenseless position. We find no where in the Constitution that States may be punished for crime with privation of their Federal rights; therefore, they hold them perpetually; therefore, they hold them unconditionally. In real earnest, is this logic? is this knowledge of common and natural law? You find not in the Constitution that States may be punished for plunder, rebellion, and aggression. Are, then, these no longer crimes? are they no longer punishable? Aye; say ye they are punishable, but cannot be punished because nothing is said on the subject in the Constitution.

35. According to your theory, therefore, the Constitution is a shield for criminals, not a bulwark of protection for law-abiding people; it is a promoter of disorder, not of order. Will you admit these conclusions? But we emphatically deny that the power to deprive rebel States of their political rights is not comprised in the Constitution. It is not contained in explicit language, we admit; but that is not necessary, for the following reasons: *First*—Because the object of the Constitution properly, is to designate the different branches of Government, and to define their powers; to lay down general principles and to adopt general rules for the foundation of future legislation. The specification of cases which are in violation of the Constitution and the fixing of penalties therefor, belong to the statute law enacted by the National Legislature. *Second*—Not all crimes and penalties are necessarily specified even in a criminal code. Thus, crimes that fall under the jurisdiction of the military power, such as rebellion, which is suppressed by the military, are not necessarily comprised in the civil code. Also crimes, the penalty of which is fixed by the natural, evangelical, and common law, as murder in the first degree, need not absolutely be mentioned. Various crimes, whose nature and gravity must be judged from circumstances, have often no certain penalty affixed to them by express law.

36. Do you wish to know, then, how the power to deprive rebel States of their rights is contained in the Constitution? It is contained implicitly. It is contained in the principles of natural and common law on which the Constitution is founded. It is contained in the right granted by the Author of Nature to Nations, as well as to individuals, to defend their own existence against an unjust aggressor, by the destruction if it need be of his life, whether political or natural. It is contained in the power under the Constitution to levy war, and to guaranty to each State a Republican form of Government, which means to enforce submission to the will of the majority legally expressed. When, therefore, a certain power, like the one in question, is necessarily presupposed in the Constitution, it is therein implicitly contained.

37. But is it not strange that they who defend the independent sovereignty of each State should advance this objection? These men maintain that State authority is paramount to the Federal, and therefore, a State has the right to secede at pleasure. At the same time, they hold also that the rights of a Federal State as well as the Union are perpetual; because such was the design of its authors. According to the former doctrine, therefore, States have the right to secede, because they are independent sovereignties; and according to the latter, they cannot secede because the Union is perpetual. These two extremes are evidently contradictory. Secession-Democrats cannot have both; they must make their choice. Whichever they choose, will fail them of support.

38. But, however great the inconsistency of secession-Democrats may be, it appears insignificant when compared with the self-contradiction of their confreres, the anti-secession Democrats. These men, variously styled as anti-war-Democrats, Conservatives, late members of the Union party, hold that State authority is inferior to the Federal; that no State has the right to secede at pleasure; consequently, that Rebellion was a crime: that the war for the supremacy of the Constitution and the maintenance of the Union was constitutional to the full extent: yet, they also admit that the rights of States in the Union are perpetual and unconditional. The war, therefore, to its full extent, in defense of the Government, was in their opinion constitutional; yet, the logical, inevitable results of both the crime of rebellion and of the war, namely, the destruction of the rebel governments, their privation of Federal rights are unconstitutional. This is equivalent to affirming and denying the same thing, of the same subject, and at the same time. That men of culture should fall into so palpable a contradiction, is a painful evidence of the weakness of human reason; but, that they should be extolled by partisan favor, as bright luminaries of intelligence and statesmanship, is an insult to the science of government and to an enlightened community.

39. No; under no circumstances shall we grant that the rights of States under the Constitution are perpetual and unconditional, except our opponents maintain that the Constitution is above both natural and divine laws, which absolutely require of all subordinates, whether States or individuals, submission to lawful authority, fulfillment of agreements, and forbearance from all aggressive acts.

40. To return, therefore, to our first argument: the insurgent States are out of the Union, not because they had the right to secede, but inversely, because they had not the right to secede. Hence, the argument of the author of the Inaugural: "*We cannot admit that the insurgent States had the right to secede by their own authority, consistently with the principles we held and established by the war; therefore they are not out of the Union as States,*"

is defective in logical connection between antecedent and consequent. The conclusion should be exactly the contrary one. We cannot admit that the insurgent States had any right to secede by their own authority, to plunder Federal property, or to wage war against the Government; therefore, they are out of the Union as States; that is, they have forfeited *de jure* their civil governments and State rights, though their obligations remain, and like conquered provinces they are under the authority and law of the Federal Government.

41. Similar to the preceding is the fallacy contained in the following dilemma, often proposed by democrats: "One of the two propositions is true; either the Southern States seceded or they did not. If their ordinances of secession were valid the war was wicked and unjust; if they were invalid and void, then, as a matter of course, those States were never out of the Union, and forfeited none of their rights under the Constitution."

42. This dilemma may be retorted as follows: one of the two propositions is true; either the Southern States seceded or they did not. If their ordinances of secession were valid, then, as a matter of course, those States went out of the Union, and forfeited all their rights under the Constitution; if they were invalid and void, the war was not wicked and unjust. Hence it appears that this dilemma is a mere sophism, since it proves equally well both contrary propositions, a thing which no true argument can do according to Logic. Here, also, the fallacy consists in the false connection between antecedent and consequent in the second member of the dilemma, namely: "If the ordinances of secession were invalid and void, then, as a matter of course, those States were never out of the Union, and forfeited none of their rights under the Constitution." The inference should be precisely the contrary. For, if the ordinances of secession were invalid and void, their passage was a violation of the Constitution, for which, as well as for other crimes, they justly forfeited their rights under the Constitution.

43. But if rebellion and war upon the Government are crimes, resumes the author of the Address, in that case they should be punished, after trial and on fair conviction. "*It is insisted*," says he, "*by those who argue in favor of the reconstruction measures, that the southern people rebelled, and that rebels ought not to possess political rights or functions. The answer to this is plain. No man or class of men under our form of government can be deprived of rights or punished for crime, except after a fair trial and conviction.*"

44. Truly the proposition, if absurd, is yet ingenuous! For neither judges nor jurors could be found North and South duly qualified to try the rebellious States, on account of either complicity, bias, or prejudgment of the case. What? to try by jury crimes so public, committed by whole States, and already judged and vindicated by the sword in the battle-field? Can a proposition be more preposterous, more contrary to the law and usage of nations? Are not crimes subject to military law in time of war? And in time of peace are there not crimes which may be summarily punished even by private authority, without trial, as burglary and murderous assault? Is the punishment inflicted in these cases any less than privation of power to do harm? By what authority are private individuals allowed to punish the offender without trial? Why! by the authority of the God of nature and of all mankind! Is the life of nations less important than that of individuals? If, therefore, no trial is required in one case, neither in the other.

45. Second part of the Argument. "The insurgent States forfeited their civil Governments, and all the rights and privileges of Federal States *de facto*." Thus far we have viewed the insurgent States in their true light as violators of the Constitution and unjust aggressors of the Federal Government. If now, for argument sake, we should look upon them as some foreign nations unjustly did, as belligerents, and grant for a moment the doctrine of independent State sovereignty; even so, we maintain that they forfeited their civil governments and all political rights and privileges.

46. Within the period of five years, between 1860 and 1865, they had two different civil governments; one which professed allegiance to the United States, and another to the Confederate States. Both were *de facto* destroyed; hence, at the close of the civil war in 1864, no civil governments existed in the South.

47. The local governments which maintained allegiance to the United States, were destroyed by the Southern States themselves in 1860 and '61, when Confederate Governments were established in their place. From that moment, therefore, their rights and privileges as Federal States ceased entirely. Mr. Trumbull, in his speech delivered in the United States Senate January 23, 1868, clearly explains this point. "They (the insurgent States) "could not take themselves out of the Union, and they could not take their State out of the "Union; but what could they do, and what did they do? They had a State organization. "They could destroy that State organization, and they did destroy it. The political organ- "ization of the State was by their own act destroyed in 1861, and then the people of that "State had no ability to perform any act under the Constitution of the United States which "it required a political State organization to perform. Hence they could not elect a Senator "to the Congress of the United States. Why? Because they had no political State organ- "ization, no Legislature; and the Constitution says that Senators shall be elected by the "Legislatures of their respective States. Hence their representation ceased. Of course a "hostile organization—one which under the Constitution of the United States we had author- "ity to put down by force of arms, and which we did put down by force of arms—could not

"elect a Senator to this body. That was not the State organization contemplated by the "Constitution, because the Constitution provided for a State Legislature composed of mem- "bers who were loyal and true to the Constitution of the United States."

48. Now the governments which owed allegiance to the Confederacy were destroyed by the forces of the United States, as is well known. The Confederate States declared their independence; upon that point a controversy arose between them and the United States; both sides appealed to the arbitration of the sword. Upon its decision their political rights, property, fortunes, even life itself, were staked. The decision of the sword written in characters of blood, was rendered in the battle-field amidst the clash of arms, the thunder of cannon, the shrieking of shells. The decision was that "the Union was right and the Rebellion was wrong." The cause of the Confederate States was then lost, together with their civil governments and political rights.

49. What claim have they now to the disputed right, after having been settled by the sword? Who ever heard of a belligerent, fairly beaten in battle, impudently demanding the immediate restoration of the rights which he had forfeited?

50. The verdict of the sword and its practical results were frankly admitted by the leading Generals of the Confederate Armies, at the time of surrender on the battle-field, who therefore counseled their comrades to lay down their arms, and, with a manly spirit of submission, asked no other terms than a generous pardon. The author of the Inaugural concedes this fact: "*those in arms against the national authority surrendered without any conditions other than such as were agreed upon by the generals in the field*"; and nevertheless, with singular inconsistency, he immediately steps back and claims for the defeated Confederates not as a favor, but as a right, the restoration of all their civil and political privileges. As well may a criminal convicted of murder in the first degree assert his claim to the gubernatorial chair of a State!

51. But Congress, replies the author, "*formally declared that the war was not waged on our part in any spirit of oppression; nor in any spirit of conquest or subjugation; nor for the purpose of overthrowing or interfering with the rights or established institutions of those States.*"

52. So will, sometimes, a good and peaceful man assure an unjust aggressor, that he has no intention of taking his life, nor even of fighting with him, if he will desist from his unjust attack. So will often a public officer also, declare to an offender that he will use no coercion, if the latter will peacefully submit to authority. In either case, however, if the transgressor persist in his wicked purpose, will the author say that the other party is bound by his promise to sacrifice his rights, to forsake his duty, to imperil his life for the offender's sake! Common sense, law, and usage scornfully reject a doctrine so pernicious and absurd.

53. It is true, therefore, that President Lincoln proclaimed in his first Inaugural Address, that the North would not unsheathe the sword except the South did it first. It is true that Congress declared that "the war was not waged by the Government for the purpose of overthrowing or interfering with the Southern Institutions." But to all these declarations and promises, a condition was added, that the insurgent States should lay down their arms; restore the Federal property; obey the Constitution.

54. These conditions were not fulfilled. Resistance to authority was carried to the extreme. The insurgent States impressed in their army every man capable of bearing arms, "from the cradle to the grave," as Grant concisely expressed it. They proclaimed to the world their intention, "either to win or to die." In this emergency "either swim or sink," either conquer or perish, was the alternative of the Federal Government. The right and duty of preserving its own existence, and of enforcing the law of the land, left no option as to the course to be pursued. "The Nation must and shall be preserved" was the unanimous response of the loyal people from one end of the Republic to the other. The struggle that followed was fearful, and the results such as might have been expected. Legislatures, Executives, Judiciaries; in a word, all the civil governments of the insurgent States were swept out of existence by the tornado of war, like chaff before the wind.

55. Who is to blame for this result? Undoubtedly, the unjust aggressor who obstinately refused in time to listen to the voice of right, justice, and reconciliation. The promise made by Lincoln and Congress to preserve the Southern institutions was prompted by Clemency and Generosity, not demanded by Justice. But acts of clemency are always conditional, and must be merited by submission; whereas the duty of Justice is absolute and admits not of dispensation. The Federal Government was released from its pledge, the moment the insurgent States refused to lay down their arms.

56. But Congress, insists the author, "*repeatedly recognized their separate State existence in the adoption of the Constitutional amendment abolishing slavery, in the official intercourse with the other States and the General Government, in the appointment and confirmation of judicial and other officers for them.*"

57. This assertion is positively denied. Congress declined to recognize the provisional Governments set up by the arbitrary power of President Johnson: hence it steadily refused to admit their delegates to seats in the National Capitol. Congress, it is true, tolerated them for a period of time, for experiment sake; but toleration is not recognition. It was during this time of probation that Congress submitted to them the Constitutional

amendment abolishing slavery; that it appointed judicial officers for them, and did other acts with a view of testing the sincerity of their submission to Federal authority previous to the ratification of their provisional Governments and their admission to Congressional representation.

58. How sadly disappointed was Congress in its expectations is a well known fact. The new Governments made use of their power to reënslave the freedmen in another form; to restore impenitent rebels to power; to supply them with arms against the friends of the Federal Government, and those especially who fought for its preservation; so that thousands of loyal men were compelled to flee for their lives. Very justly, therefore, Congress refused to recognize the new civil Governments appointed by the President, until they complied with the Congressional provisions.

59. To recapitulate the whole argument in brief. The plunder of Federal property; the act of secession by State authority; the act of rebellion and war upon the Government committed by the insurgent Southern States are unjustifiable crimes which, by the Constitution and by the law of Nations and in accordance with the natural and evangelical law, are punishable with the privation of all political rights and even with death. The Southern insurgent States therefore forfeited *de jure* all their rights, both State and National; they forfeited them *de facto* also; since the loyal State organizations were destroyed by their own act in 1861, and the rebel organizations were destroyed by the Federal forces. Therefore, by rebellion and secession the insurgent States lost their character and condition of States in the Union, and at the close of the war they had no civil Governments.

THIRD PART.

THE LOGICAL CONSEQUENCES OF THE CRIME AND PUNISHMENT OF ARMED REBELLION. FALSE CHARGES AND OBJECTIONS OF THE AUTHOR OF THE INAUGURAL AND PARTY MEN.

60. The crimes of the insurgent States and their well-merited punishment having thus been clearly established, it is time now to consider the logical consequences which thence inevitably follow.

61. First Inference. If the acts of secession, rebellion, and war upon the Government were clear violations of the Constitution, and high crimes on the part of the insurgent States, the rebel governments set up by them, and all their acts, were illegal, null and void. By the contrary reason, both before and after the secession of the South, the United States was the true and legitimate Government, having full power to make and enforce laws; and all its acts for the preservation of the National Union, and the suppression of rebellion, either as a military or political necessity, were perfectly just, legal and valid.

62. But a certain class of opponents stop us right here, and say that they can not admit that after the secession of the Southern States the acts of the Federal Congress were legal, for it had no power to make laws. According to the Constitution, they say, for the legal validity of Congressional acts, it is necessary that all States be represented. The Southern States, since their secession, were not represented in Congress, therefore the acts of Congress since that time, and until said States are represented, are not legal.

63. As this objection comes from the allies of those who defiantly bade an eternal farewell to the National Halls, and severed all connection with the North, it affords us, we confess, considerable amusement. For it appears, from the tenacity with which their friends cling to their presumed right to the Congressional seats, that their magnanimous resolve was not altogether sincere. Be it as it may, the proposition that "for the validity of Congressional acts it is necessary that all States be represented," is not altogether true. For, if for the validity of a Constitutional amendment, the consent of two thirds of the States is sufficient, why, for the validity of a Congressional act, is the consent of the representatives of two thirds of the States insufficient? But supposing that it is necessary that all the States be represented in Congress, the Constitution evidently means States in the Union. The rebel States, we have proved, ceased *de jure* and *de facto* to be States in the Union when they set up rebel Governments; since that time, therefore, according to the Constitution, their representation in Congress was no longer necessary.

64. Besides, the absurdities which from the contrary proposition would follow, make the latter utterly inadmissible. If the representation of rebel States were necessary for the legal validity of the acts of Congress, said States would be in reality integral parts of two antagonistic Governments; they would at the same time be composing and dissolving elements of the Union. The South would have the right of being represented both at Richmond and Washington; not so the North. Thus, the acts of the Southern Congress would be legal without the vote of the North; the acts of the Northern Congress would be illegal without the vote of the South. Hence disloyalty could legalize its own acts, whilst loyalty could not. Disloyalty, no matter how much in the minority, could at pleasure impede legislation by withdrawing, and thus obstruct the machinery of government; loyalty, on the other hand, would be entirely helpless; hence the Constitution would offer a superior advantage to disloyalty and encourage it effectively. Will our opponents admit

all these absurdities? Will they go down the whole depth of the precipice of error? If not, they must retrace their steps.

65. Second Inference. If in consequence of secession, rebellion and war upon the Government, the insurgent States forfeited all their rights, it follows, by irresistible conclusion, that they have no right to any political office, either State or National; that they are not entitled to any compensation for losses sustained by the war, nor to the payment of the Confederate debt, nor to the pension of rebel soldiers. By the contrary reason, they who were loyal to the Government in the hour of peril, and offered their lives and treasure for its support, are entitled to the promised bounties; and the National debt, contracted on account of the war, must be paid faithfully and entirely, in accordance with the pledge given. No debt was ever more necessary, more just, and more beneficial to the Nation, for it was the price of our national life. The faith and honor of the Nation, as well as the credit of republican institutions, are pending on the punctual discharge of this sacred obligation. The remarks made by the Geneva Chamber of Commerce, in their friendly communication to the American Congress, are pertinent here, and deserve the careful consideration of the American people. They are as follows: "Brethren of the "United States, pray hear us. * * The moral responsibility of a republican people is "much more at stake than that of a people governed by an absolute monarch; they ought "to know that they can not put on any body but themselves the dishonor which would result "from breaking their engagements; they ought to know that to a people, as to individuals, "the true means to establish their credit, and to give a solid basis to the confidence placed in "them, is to fulfil most scrupulously every engagement they may have contracted."

66. Third Inference. If the insurgent States forfeited *de jure* the right of self-government in local matters, and the rebel governments were destroyed by the hand of war, so that at its close no civil governments existed in those States, the power, therefore, which succeeded them was the military, which, according to the law and custom of nations, holds public control until a civil government is established by authority of the conquering power; and during the period of military rule, by the same law and custom of nations, the writ of *habeas corpus* and trial by jury are superseded by military orders and tribunals.

67. Fourth inference. If, at the close of the war, there were no civil governments in the seceded States, and, as stated, they were then under military rule, it follows that they became subject to Congress with respect to the manner in which they should be governed by military commanders; the term of duration of the military rule; the conditions for its cessation; the power of reorganizing civil governments; their mode and conditions; the ratification of the new Constitutions, and the qualifications of the delegates to Congress. The reason is, because all these things must be defined and sanctioned by law. Now, neither the Executive nor the Judiciary Department has the power to frame laws, but Congress alone.

68. It follows, therefore, strictly, *first:* that Congress has power to reconstruct or reorganize the late insurgent States; *second:* that it has power to regulate the question of suffrage in said States for that object. Because, means and end are inseparable; authority therefore over the latter, implies it over the former also.

69. Hence we gather the following important doctrine concerning the power of Congress to regulate suffrage in the insurgent States; it arises from the following sources: 1st. directly from the special jurisdiction acquired over the insurgent States *de jure*, by their legal forfeiture of rights; and *de facto* by the result of the war which destroyed their civil governments, in consequence of which, by the law and custom of nations, each of them may be reorganized at such a time, in such a manner, and under such conditions as may seem expedient to the conquering power for the public safety; 2d, it arises from the fact that the regulation of suffrage in the South is an absolutely necessary means for protecting both the life of the Nation and of its citizens; and since every law, human and divine, imposes on the Government the obligation of defending its own existence, as well as that of its subjects, they consequently grant the use of the necessary means. Now, if said laws permit the use of the bullet, when necessary for self-defense, why not the ballot also? 3d, The right to regulate suffrage arises moreover from the injunction made upon the Government by the Constitution in Art. IV., Sec. 4, "to guarantee to every State in this Union a Republican form of government"; and from the power conferred upon Congress in the last clause of the eighth section of the first article of the Constitution, "To make all laws "which shall be necessary and proper for carrying into execution the foregoing powers and "all other powers vested by this Constitution in the Government of the United States, or in "any department or officer thereof." Whenever, therefore, by reason of some article embodied in the Constitution of a State, or any other cause, the Government of a State is anti-republican in form, Congress by virtue of the foregoing clause has the power to pass a law for the compliance with Art. IV., Sec. 4, of the Constitution. Hence it may regulate suffrage by law if necessary.

70. From all this, it appears that the power to abolish slavery, under the Constitution, existed previous to the military necessity claimed by the Emancipation Act. For the Government which permits human beings, made in the image of God, to be driven like cattle to the market, is neither Republican, nor Christian, nor Human. Nevertheless, it seems

that our eminent statesmen, fearing a terrible convulsion, and probable disruption of the Union, if that power was enforced, hesitated, and connived at iniquity for over eighty years. But the God of Justice and Right would not tolerate it any longer; and in the appointed time,—as Lincoln in his second Inaugural rightly said,—"He gave the Nation a terrible war, by which, as by a baptism of blood, this country was cleansed and purified of the sinful stain of Human Slavery."

71. But, Democrats, though compelled to grant that at the end of the war the insurgent States had no civil governments, and became therefore subject to Congressional legislation, contend nevertheless, that the war being ended they immediately recovered all their former rights and privileges, including the right of representation in Congress. Such a result is certainly marvelous as well as unexpected. Why? to lose and yet win on one side; to win and yet lose on the other? This is certainly a most extraordinary result. If the successful termination of the war brought such a result, victory then was worse than defeat; to fight four years, to sacrifice thousands of lives, to spend millions of treasure in order to secure such a result, would be the highest folly and crime. In what code of law, either modern or ancient, do our opponents find that States which forfeited all their rights and privileges, both *de jure* and *de facto*, regain them at once as soon as conquered by the sword? What? to readmit immediately into the Union rebellious States that sought the destruction of the Nation? that fought with desperation, and gave up the contest only when they fell exhausted under the staggering blows of Grant? to readmit them to the full participation of power, honor, and glory, without even imposing a small penalty for their enormous crimes? without exacting any probation, requiring any security of submission in future? Would this, pray, be a due regard to the public safety? Would it be a vindication of the Constitution? a tribute of justice to the loyal States? to the gallant soldiers who are living, and to the heroes who are dead?

72. That secessionists should speak so, is not surprising; but that men who supported the war for the Union should entertain the same sentiments, appears almost incredible. Yet, such is the fact. One of them, recently elevated to the high position of United States Senator, did not hesitate to use the following language before a public assembly: (1) "By "your consent the pledge proceeds from me to contribute by all the power that in me lies "to the *speedy, immediate, unconditional* release of the people of the ten Southern States "from the bondage which I have already described, and the restoration *as an entirety and* "*totality of every constitutional right* of those States as members of this Union." The sentiments of the author of the Address are analogous to the preceding. May we ask these champions, these bright lights of a regenerated Democracy, if at the time they supported the war for the Union, they knew the consequences which rebellion entails upon the guilty by the law and custom of every Nation, both modern and ancient? If they did not, they evince the most lamentable ignorance; if they did, the most grievous inconsistency.

73. Fifth inference. If the plunder of Federal property, secession, rebellion, and war upon the Government were crimes, and the privation of political rights a just punishment, as it has been demonstrated, it is then the duty of every friend of social order, right, and justice to approve and not to condemn in harsh language that punishment; just as every honest citizen approves the vindication of the law by the punishment of those guilty of its infraction.

74. But, punishment, replies the author of the Inaugural with the whole Democratic party, should not be excessively severe. "*The Congressional policy subjects the white population of the South, men, women, and children, to the domination of a mass of ignorant negroes just freed from slavery. It compels them to exile themselves from the soil in which sleeps the dust of their kindred for generations. It places them under military rule.*" Surely, such a punishment is too severe, and unworthy of a magnanimous and Christian Nation.

75. Omitting for the present the particular, we will give first a general answer to this objection. A punishment which is less than the desert of a crime is not too severe. The crimes of rebellion and aggression upon the Government committed by the Southern States, are punished by nations generally with privation of all political rights; with confiscation of property, banishment, and sometimes with death. Now, has the Federal Government punished the chief leaders of the rebellion with death, as England did the Sepoys; and bloody Spain her revolutionists? No; it has released them on parole, even the arch-traitor himself. Has the Federal Government disfranchised all those who participated in the rebellion? No; except a small number which is diminished by the amnesty proclamation. Has the Government confiscated all their property? No; most of the property seized during the war has been restored to them. Has the Government banished them from the country? No; it has allowed them to live at option in any part of the national domain; to enjoy liberty and the pursuit of happiness. And is this too severe a punishment for their scandalous rebellion against authority, and the immense sacrifice of life and treasure which they have caused to the Nation?

76. But "*they are our countrymen*," rejoins the author; "*they are the bone of our bone*

(1) Eugene Casserly.

and flesh of our flesh." Aye: and the Bible tells us that "if thine eye offend thee pluck it out, and if thine hand offend thee cut it off."

77. Before pronouncing a punishment too severe, it is necessary to inquire into the nature of the crime committed. Crime and punishment are correlatives, connected together as cause and effect. It is a practice, both unjust and prejudicial to society, to separate them in public debate. If the execution of a criminal be viewed without reference to his crime, it will appear a murder; and every punishment seen in a separate light will seem not only excessive but a positive injustice.

78. It is thus, that the enemies of the Congressional Reconstruction make the measures of Congress appear not only too harsh, but unjust and cruel. It is thus, that they make what they call *radicalism* a synonyme of severity, cruelty, and inhumanity: when, in reality, it is simply justice to the innocent, and justice, tempered with mercy, to the guilty. It is thus, that they who hypocritically affect love and devotion for the Constitution, while seemingly shrinking with horror from any thing which is not expressly contained in that document, sometimes hide, sometimes defend the grossest violations of their partisans, for which, in other countries, individuals forfeit all rights except one—"the gallows."

79. Incessant is the clamor of these men against Congress, that it is unconstitutional to deprive the Southern States of their rights, but never do they look upon it as a well-deserved punishment; they never refer to the crimes which entailed it, far less they represent them in a fair light. Instead of this, they destroy the chapter of history which relates the guilt, and retain only that which records the punishment. And upon this they dwell at length; this they comment, describe, and magnify to immense proportions, for the purpose of arousing the imagination and passions of the simple and uninformed, and of convincing them that the Congressional measures are, in the language of the Author of the Inaugural, "*a violation of the fundamental principles of the Constitution, a violation of liberty, of every sentiment of humanity and Christianity, a disgrace to the country and to the age in which we live.*" As well may they sever the head from a human body, in order to make it appear a monster, as to omit in the history of reconstruction the fact that the Southern States forfeited all their rights by rebellion, in order that the acts of Congress may seem unconstitutional. Restore the mutilated portion of the narrative, and all parts will perfectly correspond. Let the case of the insurgent States be fairly explained to the people, and, beyond all doubt, no conscientious man will ever accuse Congress of severity, but rather of excessive leniency toward those States.

80. But why conceal the history of the crime? why pass over its horrible details? why suppress its aggravating circumstances? What is the intent, the object, the motive? Are they who do this sincere? Are they honest? Shall, then, the present and future generations be deprived of the only advantage which may accrue to them from the terrible scourge with which a kind Providence has visited this country, namely, a moral lesson for themselves and children that "Rebellion is a heinous crime, and its consequences are terrible?" Shall we then forget so soon five hundred thousand brave soldiers cut down in the prime of life by the accursed hand of rebellion? Shall we obliterate the wailings, sighs, and tears of bereaved mothers, sisters and wives occasioned by this execrable monster? Shall we have compassion on the guilty, and refuse our tears of sympathy to the poor widows and orphans of the innocent victims? Let us be humane with our wayward brethren! Aye, let us be clement and generous! But before being clement, let us be just to the innocent as well as to the guilty! Clemency is a charming quality, but justice is an absolute duty! Justice is the supreme attribute of the Deity! Upon justice, as upon an adamantine basis, the world is poised! Let, then, "IMPARTIAL JUSTICE TO ALL MEN," be our motto, for it is inscribed in flaming characters on the sword of the Omnipotent.

81. Thus far we have refuted the objection of the author on general grounds; we shall now pass to the particular. "*The Congressional policy* (says he) *subjects the white population of the South, men, women, and children, to the domination of a mass of ignorant negroes, just freed from slavery. It compels them to exile themselves from the soil in which sleeps the dust of their kindred for generations. It places them under military rule.*" This objection comprises two charges; that the Congressional policy subjects the Southern people to the domination of the negro, and that it subjects them to the power of the military. We shall commence with the latter.

82. "*In these measures,*" says the author, "*Congress commits the solecism of legislating martial law, that is under a Constitutional Government, in a period of profound peace.*" Just so, if the insurgent States were not subject to Congressional legislation by the right of war. Just so, if they had submitted to authority in good faith, if they had not persecuted loyal citizens. Thousands of them were murdered, thousands compelled to leave the country, and many to hide in secret places. Congress was beset with petitions praying protection to the lives of loyal citizens. What should Congress do? Refuse their request? Abandon the friends of the Government to the rage of their enemies? Their lives, property, and liberty had been secured to them by every sacred obligation of right, justice, and gratitude which could bind the Nation. "*The solemn pledge of the Nation,*" says the author, "*can not be violated without a breach of public faith upon our national banner.*" This is true, when the condition under which a pledge is given to a party has been faithfully fulfilled by the

latter, as the loyal whites and blacks of the South have done, but not so the rebels. Congress, therefore, was in duty bound, when other expedients had failed, to protect loyal citizens by military force.

83. But is it true that "*in the Southern States there is no other law but the will of the commander?*" that "*every civil officer, executive, legislative, and judicial, is left to hold his position at the pleasure of the military?*" that "*civil rights exist there only at the pleasure of the military?*" Not long after the close of the war, provisional civil governments were organized by the arbitrary power of the President, and only tolerated by Congress; civil officers were then elected and laws passed under those governments, as all know. Military commanders have subsequently been established in the Southern Districts by act of Congress, simply for the purpose of protecting life and property and of enforcing the laws, should civil authorities be either unwilling or unable to execute them. The military commanders thus appointed have not an absolute and independent power. They must faithfully execute the laws of Congress, the orders of the President and of the General of the Army, and may be removed as often as it is deemed expedient. Where is then their independent authority? their absolute dictatorship? The charge, therefore, that the insurgent States are under military despotism is not true.

84. We pass now to the other charge, that "*the Congressional policy subjects the white population of the South, men, women, and children, to the domination of a mass of ignorant negroes just freed from slavery; consequently, it compels them to exile themselves from the soil in which sleeps the dust of their kindred for generations.*" We confess that we cannot well reconcile these two assertions: "the Congressional policy subjects the Southern people to '*military*' and to '*negro*' domination." Are they subjected to both at one time? If not, to which are they subject? But let us omit this.

85. We have demonstrated that in consequence of the forfeiture of rights by the insurgent States and the result of the war, Congress has the right to regulate suffrage in those States for the purpose of reorganizing civil governments. Now we affirm further, that when absolute justice and necessity demand the exercise of said right in conformity with the public weal, it is the bounden duty of Congress to use that right. This proposition is self-evident, and needs no proof. For the duties of Justice are indispensable. The question, therefore, is resolved into this: Was Congress in duty bound to regulate suffrage in the Southern States? We answer most emphatically, Yes. Justice absolutely demanded it, for the protection of the lives, property, and liberty of loyal men, both white and black. Gratitude demanded it, for the support they rendered to the Government in the hour of peril, at the cost of life and blood. Public faith demanded it, on account of the promises made to them during the war. Public safety demanded it, as a security against rebel machinations. If, therefore, from the concession of suffrage to the freedmen arise inconveniences that are unpleasant to disloyalists, all we can say is, there is no redress. When the alternative is between Clemency and Justice, the Government cannot sacrifice the latter for the former. If the inconveniences are too hard, they who were the moral cause of them by their impenitence and obstinacy must bear the blame. Had they submitted in time to Constitutional authority; had they accepted the first plan of reconstruction, a very easy and reasonable one; it is positively certain that neither emancipation nor extension of suffrage would have been resorted to. Both these measures, though perfectly constitutional in consequence of the armed rebellion of the Southern States, would never have been adopted, had they not been forced by absolute necessity, as the documents show. No Government on earth did ever exhibit more clemency, more moderation and patience toward violent rebels, than the Government of the United States. But clemency, moderation, and patience have a limit; if they transcend the boundaries of justice they are no longer virtues, but vices. They have now reached that limit; and we trust, for the sake of the innocent and loyal citizens, for the welfare of the Nation, that justice alone will be henceforward administered, until the last embers of the rebellion are totally extinguished.

86. Therefore, even admitting that the complaints contained in the objection of the author are true, nevertheless, from a solemn duty of justice and necessity, Congress could not do otherwise than to grant the elective franchise to loyalists both white and black.

87. But, we cannot agree with the author of the Inaugural, that "*the Congressional policy*" (on account of the extension of suffrage) "*subjects the white population of the South to the domination of a mass of ignorant negroes; and that it compels the whites to exile themselves.*"

88. The whites are in the majority there. According to the last census of the Southern States, in 1860, the number of whites was 4,622,281; and that of the blacks, 3,346,861. The majority of the whites, therefore, was then 1,275,420. Allowing a decrease of population in both races on account of the war, the majority still preponderates in favor of the whites.

89. In all Conventions held under the Congressional plan of Reconstruction, the majority of the members present have been white. In the registration books more whites than blacks have been registered, though a great many of the former refused to register.

90. Now the whites, with the exception of the disfranchised class of rebel leaders, (whose number is greatly reduced by the Amnesty proclamation,) are entitled to vote; how, then,

can they, having an electoral majority, be made subject to the negroes by the ballot? Is it because the latter prevent the former from voting? The contrary is the fact. The following statement from an eye-witness, and correspondent of the *New York Tribune*, bears testimony on the subject: "If jeers and abuse will make Northern men leave, they will "jeer and abuse; if threats are needed, they will threaten; and if violence is required, "they are ready to maltreat and murder. This seems severe; but one look at the gang of "them around a poll, with their trowsers in their boots, their broad brimmed hats half "covering their faces, their revolvers in their belts, and the bowie knives in their bosoms, "will satisfy the most incredulous."

91. The question, therefore, reverts; if the white population in the South have an electoral majority, how can they be placed under the domination of the negroes? The only answer to this is, because of their own free will and accord, at the suggestion of disloyal demagogues, they refuse to vote. In proof of this we will cite one among the hundreds of cases which have occurred at the late elections. The *Vicksburg Times*, immediately before the election, had the following notice: "STAY AWAY FROM THE POLLS.—We "again urge every decent white man, every honorable gentleman of the American race, to "avoid General Ord's election as he would avoid pestilence and prison. As this advice "does not apply to, and is not intended for the white sneaks of the Loyal League, we shall "expect the last named despicable vermin out in all their strength." And after the election: "THE IMMORTAL FIGHT.—We are gratified to be able to announce to the readers of "the *Times* that at the Court House yesterday, the only place open to the whole people, "there were cast the votes of eight people only! We tried to get the names of the interesting sneaks who voted, but failed, though the *Times* office does and is ready to pay a "dollar for the name of each voter. * * There were only eight cowards, dogs, and "scoundrels of the Maygatt and Mekee stripe." Now if elections go by default in the South, who is to blame? Have Union men in this State a right to complain of Governor Haight's election because it went by default?

92. But supposing, even, that the elections in the South were carried exclusively by negro vote, (which is not the fact, for many districts have given democratic majorities in various States, and the Constitution has been defeated in Mississippi by negro votes,) we will ask, how can the whites be subjected to the domination of the blacks? Are they not, according to the author's language, "*almost as ignorant of political duties as the beasts of the fields?*" and the Caucasian gentlemen, on the contrary, very intelligent? Which is easier, that intelligence be controlled by ignorance, or that ignorance be controlled by intelligence? Did not Southerners often boast that the late bondsman would always remain attached to his former master, and could easily be controlled by him?

93. Let us suppose further, that the Southern States were in fact Africanized by negro vote, and that the blacks controlled every department of the civil government; nevertheless, how long would such a state of things last? How long would the political power remain under negro control? The white majority there will be immensely increased by immigration from all parts of the world, as soon as law and order are restored; and, as certain as the Sun rises in the Orient daily, every vestige of negro power, whatever it be, will be swept from the South with the rapidity of a whirlwind. Hence, it is neither the fact, nor is it possible that the Southern people can be long subjected to negro domination.

94. And, if such be the case, what compels them to go into banishment? If they go, it must be by their own free act; and certainly, to remove voluntarily to another portion of the national domain, and enjoy all the rights of citizenship under the Government's protection, can not be considered such a dreadful punishment, such a painful banishment as to call forth plaintive notes. One thing is remarkable, however, that while the Author with so much feeling complains of the exile of Southern disloyalists, he does not utter a word of sympathy for the thousands of loyal citizens who were compelled to leave the South under threat of murder and assassination.

95. If, therefore, the white people, who have an immense majority on this continent, neither are, nor ever will be, subject to negro domination, it follows that the apprehension of the Author, that the elevation of the negro "*will introduce the antipathy of race into our political contests and lead to strife and bloodshed*" is entirely groundless. The author and his party friends may quiet their fears on this score. There is not the least danger of a conflict on the part of the blacks, who have no intention of molesting the whites, as long as they are permitted to live by the earnings of their toil, and to enjoy the common rights of nature, life, liberty, and the pursuit of happiness. Nor is there any danger on the part of the disloyal whites; for they have not the power to do it, after the last exhausting contest. A sad experience has taught them to respect the will of the Nation; and they are now aware that there is a fixed determination in the loyal American people to protect the rights of the freedmen, in accordance with the national pledge; and to establish law and order in the South at all costs and hazards.

96. But "voters should always be qualified and negroes are not," resume our opponents; "therefore, it is wrong to confer upon them the elective franchise."

97. This objection, which has the appearance of truth, will be found on mature reflection to prove, if it prove anything, that all impenitent rebels and their sympathizers, the

Copperheads, should not be allowed to vote, because they are not qualified. Let us examine each point of the objection separately.

98. *First*—"Voters should always be qualified." What does this mean? What is qualification, with reference to the performance of an act? It is the knowledge of the act to be performed, and the will of performing it well. Hence, as applied to suffrage, qualification comprises the knowledge of the thing to be voted upon, and the will of voting in conformity with right and justice. It follows, therefore, that for the right qualification of suffrage a certain knowledge of the rights and duties of citizenship and of political subjects; also honesty of intention, impartiality, loyalty, are necessary requisites. Now, it often happens that individuals do not possess all these requisites. What is to be done then? Disfranchise them all? If such a rule were universally adopted very few States could be admitted into the Union; very few governments, either State or Municipal, could be organized. Hence, it seems absolutely necessary that some dispensation be made, in order that civil governments be organized for the protection and advancement of civil society. In such an emergency, in whose favor will Democrats discriminate? Of the loyal and ignorant, or of the disloyal and intelligent? To whom will they trust the elective franchise—a power so great for good and evil—to the humble, honest, and loyal, or to the proud, dishonest, and disloyal? What can injure more a Commonwealth,—loyalty combined with ignorance, or disloyalty associated with intelligence? The terrible destruction of life during the late war, the present enormous debt of the nation, are the results of disloyal intelligence. Will then Democrats prefer intelligence to virtue, when either one or the other is the alternative? Ignorance can be easily overcome by education; not so, the spirit of rebellion. It is well for Democrats not to urge this argument of qualification too much, for it will recoil against them, both on the point of intelligence and loyalty, with terrible force.

99. Hence, we will therefore reply to the general assertion, "Voters should always be qualified." By their honesty of purpose, by their loyalty to the Government, we grant it. "Voters should always be qualified" by the knowledge of the rights and duties of citizenship; in ordinary cases, we grant this point also; in cases governed by absolute necessity, we deny it. We fully agree with the author of the Inaugural that "*Our free institutions rest upon the virtue and intelligence of the people*," and by virtue we understand chiefly honesty, loyalty, and justice. But when both virtue and intelligence cannot be obtained, and yet it is absolutely necessary to lay the foundation of a civil government for the welfare of a people, we contend that it is far safer to base the civil edifice upon virtue than intelligence. Again, when it is absolutely necessary to protect the life of the Nation or of its citizens, and the alternative is to grant to loyal men either the ballot, or the bullet and bayonet for self-defense, it is far more humane, more economical to give them the former than the latter.

100. Now to the second point of the objection: "Negroes are not qualified." After the exposition just given of the qualities required in a voter, this can be easily refuted thus: "Negroes are not qualified" by their honesty of purpose and loyalty to the Government, we deny it. Their war record is ample proof on this point. By a sufficient knowledge of the rights and duties of citizenship, with respect to some blacks—not all—we grant it. But what will this prove? Only that some among them, as well as among Democrats, are deficient in knowledge, which defect is remedied by time; but not in honesty and loyalty, which are the first qualities in a voter, and on which our free institutions chiefly rest. Now, we have demonstrated that in a case of absolute necessity, as the one under consideration, these qualities are entirely sufficient.

101. But the Author cannot concede that there exists any necessity of granting the ballot to the freedmen, as a means of protection for themselves and the Nation. He even denies that there exists any spirit of insubordination among the disloyal people of the South. "*It is not true*, (*says he,*) *that there is any disposition among the people of those States to repeat the experiment of secession..... They have in good faith submitted to the results of the war, and disclaim all idea of secession or of resistance to federal authority.*" In view of the well known facts that "the (disloyal) people of these States" have attempted to evade the emancipation act and to reënslave the blacks; that they have contrived with all their power to defeat the Congressional plan of reconstruction; that they have organized secret societies as the infamous Ku-Klux-Klan for the intimidation and assassination of loyal men; that officers of all classes, civil and military, public journalists and private citizens, have implored Congress to establish military commands for the protection of life and property; in view of all these facts, the contrary assertion by the author may be regarded as the coolest denial of the most evident truth. It is true, however, that if Southern disloyalists have not succeeded in withdrawing from Federal authority the second time, it is not because they did not "try again."

102. But "*it is not a sound reason* urges the author, *for conferring the elective franchise upon negroes, if it were true that they need more protection. Upon this theory the more helpless and ignorant the negro is, the more propriety there would be in admitting him to the ballot-box and making him a legislator and sovereign.*" Again: "*If it is a question of justice, as some assert, and justice requires the ballot to be given to the negro, then it equally requires the ballot to be given to the Chinaman. If the negro requires the ballot to protect himself, as others assert, then the Asiatic needs it to*

protect himself. There is, however, no truth in either statement. No principle of justice is involved any more than in the case of females or minors or foreigners not naturalized; nor does the negro need the ballot to protect himself any more than either of the other classes referred to."

103. This argument is neither *a fortiori* nor *a pari*. The difference between the two cases is so great, so palpably evident, that it is a wonder how an intelligent mind could ever fail to see it. Of the various reasons for which suffrage has been granted to the loyal blacks at the South, not one can be assigned in favor of the Chinese, colored men, foreigners not naturalized, women and children at the North. Although these reasons have repeatedly been stated in the course of this article, nevertheless it will avail much to sum them up briefly here, for the sake of comparison and contrast.

104. *First*—Congress, in consequence of the extinction of civil governments in the Southern States by rebellion and war, has acquired a special jurisdiction over them, which it has not in the loyal States. The blacks who reside in those States are as much subject to the immediate legislation of Congress as the blacks in the District of Columbia. Not so, however, Chinamen, colored men and others in the North, who are directly subject in local matters to the Legislature of the State wherein they reside.

105. *Second*—In consequence of the same special jurisdiction, Congress has the right of regulating suffrage in the late insurgent States, where the freedmen reside, for the purpose of reorganizing State Governments in harmony with the Federal Government; which right it has not in the loyal States, since they are neither disorganized, nor have they forforfeited their Constitutional rights by rebellion. This is so true, that if freedmen should emigrate to places beyond the jurisdiction of Congress in local matters, it could not then bestow upon them the right of suffrage.

106. *Third*—In the hour of the country's peril, the freedmen, though exposed to persecution and death; though brutally ignorant, as the author asserts, knew better than many intelligent Democrats how to be loyal to the Government. They stood bravely by the flag, and many of them died in its defense; whereupon they obtained from the Government a guarantee that their lives, liberty, and property should be protected in future. Neither Chinamen, nor the colored people and other classes that reside in the loyal States were exposed to the same dangers during the rebellion; nor did they render the same service, and receive the same pledge of the nation.

107. *Fourth*—Since the close of the war the freedmen have been subjected by disloyalists to all sorts of persecution. Their civil rights have been trampled upon, their liberties attacked, their lives threatened, and thousands of them have been brutally murdered. Nothing of the kind has occurred to Chinamen, colored people, and other classes in the loyal States.

108. *Fifth*—In the insurgent States there is an absolute necessity to enforce the laws of Congress, and to sustain the national authority, which is, as yet, stubbornly resisted by impenitent rebels, who entertain still hopes of overthrowing it finally. No necessity of the kind exists in the loyal States.

109. Hence, neither by right, nor justice, nor necessity could Congress extend the privilege of suffrage to the Chinese, colored men, foreigners not naturalized, women and children in the loyal States, as to the blacks in the insurgent States. To suppose, as the author of the Address does, that brutal ignorance, weakness of sex, helplessness of condition, are the grounds upon which the elective franchise has been granted to the Southern blacks, is such an assault upon common sense, and a grievous slander upon the National Congress, as tarnishes the reputation of a gentleman.

110. The assertion, therefore, that "*the Congressional policy proposes to ignore all discrimination in political privileges; that no line can be drawn unless suffrage is confined to the white population,*" is wholly untrue. The line is easily drawn by the immediate jurisdiction which Congress has over the blacks in the South, but not in the North; by the necessity that exists of protecting the lives, property, and liberty of its citizens; of reorganizing loyal Governments; of maintaining Federal authority in the Southern, not however in the Northern States. Hence it follows, that Congress has the right to regulate suffrage in the former and not in the latter States.

111. The doctrine that "in loyal States the right to regulate suffrage belongs to the people of each State" has been clearly declared by the late National Union-Republican Convention held at Chicago, and very properly. For, aside from the opinion of those who maintain that the elective franchise is a privilege and not a right; even admitting it to be a right, yet it is not of the same nature as those mentioned in the Declaration of Independence, namely, life, liberty and the pursuit of happiness.

112. The foregoing declaration of the Chicago Convention effectually refutes the false charge of Democrats, that universal suffrage in the South means universal suffrage in the North, including negroes and Chinamen; and also the following statement of the Author of the Inaugural: "*A portion of those persons in this State who favor negro suffrage hesitate to advocate Chinese suffrage; but the Congressional policy makes no distinction.*" Both points are untrue. *First*, The Congressional policy does make a distinction by the right, justice, and necessity, which, as it has been proved, exist in one case and not in the other. *Second*, No portion of the Union Republican party of the State of California has ever advocated

Chinese or negro suffrage in any loyal State ; nor has such a proposition ever been submitted to the vote of the people of this State ; if it had, it would have been, as it will ever be, defeated by an overwhelming vote, from both Democrats and Republicans.

113. Such are the fabrications of the Democratic politicians for the purpose of obtaining political advantage. It is thus, that at the last election they succeeded in driving away from the Union-Republican ranks many simple-minded persons, and brought them over to their party ; it is thus, that they secured a share of political power which they could not have obtained by legitimate means.

114. To CONCLUDE ; from the evidence we have offered, it is made manifest that Congress has a special jurisdiction over the late insurgent States, which neither the Executive nor Judiciary have, and in consequence of which it may prescribe such conditions for their readmission into the Union as the safety and welfare of the Nation seem to require. It follows, therefore, by a rigid logical conclusion, that as soon as said States shall have complied with its conditions, they will be legally entitled to the participation of all the rights and privileges of Federal States under the Constitution, including the electoral vote for President of the United States.

115. It has repeatedly been asserted by Democratic Journals, that if Grant be elected by the aid of negro suffrage under the Congressional plan, the election will be contested, even if it be necessary by another appeal to arms. Fondly we hope, fervently we pray, that the Angel of wrath may nevermore unsheathe his terrible sword over our heads! But, should so dreadful a calamity befall us again, there is but one course, but one duty marked to us by right and justice ; that is, to stand to the last breath by CONGRESS and GRANT.

"A DEFENSE OF THE RECONSTRUCTION ACTS OF CONGRESS, AND CRITICAL REVIEW OF THE INAUGURAL OF H. H. HAIGHT, GOVERNOR OF CALIFORNIA" ; entered according to Act of Congress, in the year 1868, by AUGUSTUS LAYRES, in the Clerk's Office of the District Court of the United States for the District of California.

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